

NOTICE OF PROPOSED ORDINANCE

Pursuant to Section 7-3 of the Town of Castle Rock Home Rule Charter, notice is hereby given that the Town Council will consider adoption of the following named and described Ordinance during its Regular Meeting on March 7, 2017 at 6:00 P.M. at the Castle Rock Town Council Chambers, 100 N. Wilcox St., Castle Rock, CO 80104

Title of Proposed Ordinance:

An Ordinance Approving an Agricultural Lease With Ruppel Farms, LLC

Subject Matter Summary:

The proposed Ordinance is to approve terms and conditions of an Agricultural Lease Agreement under which the Town will lease farmland to the existing tenant of the Box Elder Farm property for a three year term.

The entire text of the proposed Ordinance is contained herein, and copies of all documents are available for public inspection at the office of the Town Clerk, 100 N. Wilcox St., Castle Rock, CO 80104, during normal working hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

Publication Date: March 1, 2017

ORDINANCE NO. 2017-

**AN ORDINANCE APPROVING AN
AGRICULTURAL LEASE WITH RUPPLE FARMS, LLC**

WHEREAS, in December, 2016, the Town acquired certain property located in Weld and Adams Counties, Colorado known as the Box Elder Farm property ("Box Elder Property"),

WHEREAS, Ruppel Farms, LLC was the existing tenant on the farm at the time the Town purchased the Box Elder Property has expressed a desire to enter into an agricultural lease to continue to lease portion of the Box Elder Property,

WHEREAS, the Town is willing to enter into a Lease Agreement with Ruppel Farms, LLC in accordance with the terms and conditions set forth in the Agricultural Lease Agreement.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO:

Section 1. Approval. The Agricultural Lease Agreement in the form attached as *Exhibit 1* is hereby approved. The Mayor and other proper Town officials are hereby authorized to execute the Lease by and on behalf of the Town of Castle Rock, Colorado.

Section 2. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this ordinance.

Section 3. Safety Clause. The Town Council finds and declares that this ordinance is promulgated and adopted for the public health, safety and welfare and this ordinance bears a rational relation to the legislative object sought to be obtained.

APPROVED ON FIRST READING this ___ day of _____, 2017 by a vote of ___ for and ___ against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this ___ day of _____, 2017, by the Town Council of the Town of Castle Rock by a vote of ___ for and ___ against.

ATTEST:

TOWN OF CASTLE ROCK

Sally A. Misare, Town Clerk

Jennifer Green, Mayor

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Mark Marlowe, Director of Castle Rock Water

AGRICULTURAL LEASE AGREEMENT

This Lease is made this ____ day of _____, 2017 by and between the Town of Castle Rock, a Colorado municipal corporation, acting by and through the Town of Castle Rock Water Enterprise, whose address is 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Lessor”) and Ruppel Farms, LLC, a Colorado limited liability company, whose address is 29020 East 163rd Place, Brighton, Colorado 80603 (“Lessee”).

RECITALS

A. Lessor is the owner of approximately 850 acres of land located in Weld and Adams Counties, Colorado, as described in the attached *Exhibit 1* (“Property”).

B. Lessee desires to lease a portion of the Property for agricultural purposes and Lessor desires to lease to Lessee up to 560 acres of the Property described in the attached *Exhibit 2* and the water rights described in the attached *Exhibit 2* (collectively the “Leased Property”).

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Lease. Subject to the terms and conditions set forth in this Lease, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, the Leased Property, for cultivating crops, and grazing of livestock.

Section 2. Term. The Lease will be for a three year term, effective January 1, 2017 and extending through December 31, 2019 (“Lease Term”). The period January 1 through December 31 shall be referred to as a Lease Year. The Lease Term may be extended upon a mutually acceptable agreement between the Parties. Neither party shall be liable to the other party if a party elects not to renew this Lease.

Section 3. Rental Rate. Lessee shall pay annual rent, due on May 1 of each Lease Year, based on the number of acres of farmed land at \$20 per acre (“Rent”). The Rent due for the first Lease Year (1/1/17 – 12/31/17) shall be \$11,200 based on Lessee’s desire to farm not more than 560 acres. The amount of Rent due for the second and third Lease Years will be calculated based upon the number of acres of farmed land, as determined by Lessee, multiplied by a rate of \$20 per acre.

In addition, Lessee shall pay to Lessor \$1,500 each Lease Year for the right to graze up to 20 head of livestock on the Lease Property (“Grazing Right Payment”). The Grazing Right Payment shall be paid to Lessor concurrently with the annual Rent payment.

Section 4. Annual Assessments. Lessee shall reimburse Lessor all paid assessments, which include, but are not limited to the FRICO assessments, HID, and Chemigation Permit

renewals. Lessor will provide a copy of any assessments, notice or invoice to Lessee and payment to Lessor shall be due within thirty (30) days of receipt of the assessment or notice by Lessee.

Section 5. Use of the Leased Property.

A. The Leased Property shall be used solely for agricultural farming purposes, livestock grazing and hunting, as further provided in Section 7 below. Lessee agrees to properly cultivate and farm, in a reasonable and good stewardship manner, all lands within the Leased Property. All crops and crop proceeds shall be the separate property of Lessee.

B. Lessee shall be responsible for all labor, power, machinery, and moveable equipment, operation and maintenance expenses to operate the farm. Lessee's participation in the Agricultural Risk Coverage Program (ARC-CO) and other government programs shall be at the sole discretion and responsibility of Lessee. Lessor shall provide any necessary documentation or approvals necessary to enable Lessee to participate in such programs. By execution of this Agreement, Lessor grants to Lessee a limited power of attorney to administer the Leased Property in such governmental programs, provided Lessee has given notice to Lessor of any programs that it intends to participate in.

C. Lessee shall take no actions on the Leased Property which may result in contamination of the Property, including the groundwater upon, under, or near the Property.

D. Lessor shall have the option to purchase the existing irrigation pivot installed by Lessor. The purchase price for the irrigation pivot shall be fair market value. If Lessor does not elect to purchase the irrigation pivot, Lessee shall remove the irrigation pivot upon termination of the Lease.

E. Lessor, its agents, contractors, and guests shall have the right of entry for the following purposes including, but not limited to, inspection the Property, construction of improvements, hydrologic testing, and surveying. Lessor shall provide Lessee with adequate notice of such intended use of the Property. Lessee agrees to provide access, unlock gates as necessary, and provide notification to Lessor of any damage to the Property related to such guest, agent or contractor's use of the Property.

Section 5. Use of Water Rights. Lessee shall have the right to call on water rights described in *Exhibit 3*. These rights shall be used for irrigation use only and such irrigation use may only take place on the Leased Property. Lessee's use of the water rights shall be in accordance and in conformance with the terms and conditions of any and all court decrees for the water rights.

Section 6. Grazing Rights. Lessee shall have the right to graze up to 20 head of livestock on the Leased Property. Lessee shall at all time maintain adequate fencing for containment of livestock.

Section 7. Hunting Rights. Lessor hereby grants to Lessee (to include Lessee's partners, officers, directors, employees, family members, and invitees), the exclusive and unrestricted rights to all legal and appropriate hunting activities on the Property. Lessor agrees

not to lease, license, or give permission to any other party for hunting purposes on the Leased Property during the term of this Lease. Lessee may enter upon the lands at any time, without notice to Lessor, to legally hunt or to prepare for hunting. Lessee may not cause crop or property damage during granted occupancy for hunting purposes, and shall be liable for any such damages. Lessee may use all roads as they may exist from time to time to access the property. Lessee may construct temporary hunting blinds and pits, providing that for all dug pits: 1) they be installed after farming activities are completed each fall and removed and backfilled prior to farming activities in the spring; 2) that Lessor is notified of the locations of such pits; 3) that such pits are not located on center pivot wheel tracks, over buried electrical or pipeline services, or on existing roadways; 4) that such pits are marked appropriately with flagging and/or reflectors when not in use; and 5) that such pits will be closed and covered when not in use to help prevent potential accidents, and/or damages to, or by cattle that may from time to time be grazing on the Property. Lessor makes no assurances or warranties as to the suitability and/or huntable conditions existing on the Property. Lessee understands that farming operations, variables and decisions not under Lessee's control, such as low water supplies and crop selections, may from time to time limit the huntability of the Property.

Section 8. Maintenance of the Leased Property. During the term of the Lease, and to the reasonable satisfaction of Lessor, Lessee shall maintain the Property in good repair and condition. Lessee shall not, without the prior written permission of Lessor, remove or allow any other person to remove from the property any of the pumps, sprinkler, pipelines, electrical connections, fences, buildings, trees, shrubbery, or any of the improvements of any kind. Lessee shall mow weeds or grasses, including but not limited to perennial noxious weeds regularly and shall maintain free from blockage debris or other obstruction all ditches, pipelines and roads on, or abutting the Property.

Lessor, at its sole expense, shall be responsible for repair and or replacement of well pumps, well screens, and pivot gear boxes owned by Lessor. Lessee agrees to provide support in managing contractors for such repairs and/or replacements.

Section 9. Insurance. Lessor, at its expense, shall maintain hazard insurance coverage on the Property, insuring all structures and personal property owned by Lessor located on the Property.

Section 10. No Ownership Interest in the Leased Property. Lessee acknowledges that Lessee has no interest in the Leased Property, other than as specifically set forth in this Lease, and otherwise claims no right, title, or interest in the Leased Property. Effective on the termination Date, and without any further notice or writing, Lessee hereby quitclaims unto Lessor any and all right to use and any and all right, title and interest in and to the Leased Property.

Section 11. Surrender of Leased Property. At the expiration of, or upon the termination of this Lease, or upon a breach by the Lessee of any of the covenants, terms or conditions contained in this Lease, Lessee shall quit and surrender the possession and occupancy of the Leased Property in as good condition as careful use and natural wear and decay may permit.

Section 12. Risk of Operation/No Joint Venture. The relationship created by this Lease Agreement shall be strictly as lessor and lessee, and not as partners or joint ventures, in any respect whatsoever. Lessor shall bear no portion of any loss, cost, or expense incurred by Lessee in connection with Lessee's operations on the Property under this Lease.

Section 13. Indemnification. Lessee shall exercise its privileges under this Lease at its own risk. Lessee shall indemnify and hold Lessor harmless from and against all liability for damages, costs, losses, and expenses resulting from, arising out of, or in any way connected with the use of the Property by Lessee, including by way of example and not by way of limitation, any governmental fines or penalties.

Lessee shall procure and maintain the following policies of insurance:

A. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

B. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Lessor's owned, hired and/or non-owned vehicles assigned to or used in on the Property. The policy shall contain a severability of interests provision.

The policies required above shall be endorsed to include Lessor, its officers and employees, as an additional insured.

Section 14. No Guarantee. Lessee acknowledges that Lessor cannot and does not guarantee the actual physical availability or water quality of the water rights.

Section 15. No Assignment or Sublet. Lessee shall not sell or assign this Lease, or otherwise sublet the Leased Property without the prior written consent of Lessor, which consent shall be given or withheld at the Lessor's sole discretion. Failure to obtain Lessor's consent to any such assignment or sublet shall be considered a breach, shall be under penalty of forfeiture of all the rights of Lessee under this Lease, and Lessor may, in its sole option, immediately terminate this Lease.

Section 16. Default and Remedies. In the event either party should default in performance of its obligations under this Lease, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action.

Section 17. Notices. Any notices required or permitted to be given hereunder shall be in writing, and shall be deemed to be given and effective when delivered by facsimile, electronic mail, express mail, or the third day after depositing in the US mail, addressed to the Parties as follows:

If to Lessor: Town of Castle Rock
 Castle Rock Water
 175 Kellogg Court
 Castle Rock, Colorado 80109

With copy to: Town Attorney
 Town of Castle Rock
 100 N. Wilcox Street
 Castle Rock, Colorado 80104

If to Lessee: Ruppel Farms, LLC
 29020 East 163rd Place
 Brighton, Colorado 80603

Section 18. Entire Agreement. This Lease constitutes the entire agreement between the Parties with respect to the subject matter hereof, and may not be amended without written consent of both Parties. This Lease supersedes any and all existing leases on the Property.

Section 19. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original. Said counterparts shall constitute one and the same instrument and shall be binding upon each of the undersigned as fully and completely as if all had signed the same instrument. Executed copies may be delivered by facsimile or electronic mail and upon receipt will be deemed originals and binding upon the Parties, regardless of when originals are delivered.

Section 20. Binding Effect. This Lease shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies whatsoever upon any person other than Lessee and Lessor, and their personal successors, assigns, and transferees.

Section 21. Binding Law, Severability. This Lease shall be governed by laws of the State of Colorado. Whenever possible, each provision of this Lease shall be interpreted so as to be effective and valid under Colorado law. If any provision of this Lease is, for any reason and/or to any extent, invalid or unenforceable, then neither the remainder of this Lease in with the provision appears or the application of the provision to other persons or other circumstances shall be affected by such invalidity or unenforceability.

LESSEE:

RUPPLE FARMS, LLC,
a Colorado limited liability company

By: _____

Its: _____

STATE OF COLORADO)
) **ss.**
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by _____ as _____ for Ruppel Farms, LLC, a Colorado limited liability company.

Witness my official hand and seal.

My commission expires: _____

Notary Public

LESSOR:

ATTEST:

TOWN OF CASTLE ROCK acting by and through the Town of Castle Rock Water Enterprise

Sally Misare, Town Clerk

Jennifer Green, Mayor

Approved as to form:

Approved as to content:

Robert J. Slentz, Town Attorney

Mark Marlowe, Director of Castle Rock Water

STATE OF COLORADO)
) *ss.*
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017 by Sally Misare as Town Clerk and Jennifer Green as Mayor of the Town of Castle Rock, Colorado.

Witness my official hand and seal.

My commission expires: _____

Notary Public